

# The 10th edition of The International Capital Markets Review

Category: Capital Markets, Publications

written by Nader, Hayaux & Goebel | enero 21, 2021

[Julián Garza](#), [Gunter Schwandt](#) and [Jenny Ferrón](#) contributed to The International Capital Markets Review, part of the reputed The Law Reviews series published by Law Business Research.

This multi-jurisdictional guide addresses the comparative law aspect of international capital markets workload and offers legal practitioners with a reference source.

The guide is now in its 10th edition, and covers 23 jurisdictions in which leading law firms offer the latest insights and regulatory updates.

The Mexico chapter can be downloaded free of charge [here](#).

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## Modificaciones a la Circular Única de Emisoras aplicables a FIBRAs

Category: Capital Markets, Firm news

written by Nader, Hayaux & Goebel | enero 21, 2021

El 10 de diciembre de 2020 la Comisión Nacional Bancaria y de Valores publicó modificaciones a las disposiciones de carácter general aplicables a las emisoras de valores y a otros participantes del mercado de valores, conocidas como la Circular

Única de Emisoras (“**CUE**”) (las “**Modificaciones**”). Las Modificaciones entraron en vigor el 11 de diciembre de 2020.

Las Modificaciones son aplicables a FIBRAs y tienen como principal objetivo flexibilizar el marco jurídico de las FIBRAs cuando contraten financiamientos con cargo al patrimonio del fideicomiso. A continuación presentamos los puntos más relevantes:

- Será facultad de la asamblea de tenedores establecer las reglas para la contratación de financiamientos con cargo al patrimonio de las FIBRAs. Las reglas aprobadas por la asamblea de tenedores deberán establecer el límite máximo de apalancamiento y el índice de cobertura de servicio de la deuda que deberán observar las FIBRAs, que deberán calcularse conforme al Anexo AA de la CUE. [\[1\]](#)
- En caso de que las FIBRAs incumplan con los límites aprobados por la asamblea de tenedores, el administrador deberá preparar un informe de la situación y un plan correctivo para presentarlos a la asamblea. Asimismo, las FIBRAs no podrán contratar financiamientos con cargo a su patrimonio, salvo que se trate de operaciones de refinanciamiento hasta en tanto no se ajusten a los límites aprobados. Previo a su presentación a la asamblea, el plan correctivo deberá ser aprobado: **(i)** tratándose del límite máximo de apalancamiento, por el comité técnico; y **(ii)** tratándose del índice de cobertura de servicio de la deuda, por los miembros independientes del comité técnico.

Puede consultar la publicación en el DOF [aquí](#).

[1] Previo a la entrada en vigor de las Modificaciones, las FIBRAs debían observar lo siguiente: **(i)** los financiamientos contratados por las FIBRAs con cargo a su patrimonio no debían exceder del 50% del valor contable de sus activos conforme a las cifras del trimestre inmediato anterior; y **(ii)** las FIBRAs debían observar un índice de cobertura de servicio de la deuda mayor a 1.0, conforme a las cifras del

trimestre inmediato anterior.

*En caso de requerir más información en relación con lo anterior, comuníquese con sus contactos habituales en Nader, Hayaux & Goebel, o con [Gunter Schwandt](mailto:Gunter.Schwandt@nhg.com.mx) +52 (55) 4170 3052 [gschwandt@nhg.com.mx](mailto:gschwandt@nhg.com.mx),*

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# **Nuevas reglas de inversión de las Afores en el mercado mexicano**

Category: Capital Markets, Legal Alerts

written by Nader, Hayaux & Goebel | enero 21, 2021

El 7 de septiembre, la Comisión Nacional del Sistema de Ahorro para el Retiro publicó modificaciones y adiciones a las disposiciones de carácter general en materia financiera de los sistemas de ahorro para el retiro, conocida como Circular Única Financiera.

El objetivo es regular de forma más clara los criterios que deben cumplir ciertos valores en los que invierten las Afores, incluyendo FIBRAs, FIBRA-Es, CKDs, CERPIs y SPACs, entre otros.

[Consulta el resumen de modificaciones a la CUF aquí.](#)

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# Cambios y disposiciones PLD / Informes a la CNBV

Category: Banking & Finance, Capital Markets, Legal Alerts

written by Nader, Hayaux & Goebel | enero 21, 2021

El 20 de mayo de 2020, la Secretaría de Hacienda y Crédito Público, publicó en el Diario Oficial de la Federación una Resolución por medio de la cual ordena en un solo instrumento las disposiciones que establecen la forma y requisitos de los informes que deben presentarse ante la Comisión Nacional Bancaria y de Valores relativos a: (i) la integración y cambios de sus Comités de Comunicación y Control, y (ii) la designación o revocación del Oficial de Cumplimiento, entre otros.

A través de esta Resolución, se abrogaron las siguientes Resoluciones:

“Resolución por la que se expide la información y se dan a conocer los medios electrónicos para comunicar la integración y cambios del Comité de Comunicación y Control, se informe del funcionario designado como oficial del cumplimiento, se remita información de la identidad de la persona o grupo de personas que ejercen el control de la sociedad, así como por el que se informe de la transmisión de acciones por más del 2 por ciento del capital social pagado, según corresponda, contemplados en las disposiciones de carácter general que se indican”, publicada el 7 de febrero de 2013; y “Resolución por la que se expide el formato oficial y se dan a conocer el medio electrónico para comunicar la información de la persona designada como representante o, en su caso, oficial de cumplimiento, contemplado en las disposiciones de carácter general a que se refiere el artículo 226 Bis. de la Ley de Mercado de Valores, aplicables a los asesores de inversión”, publicada el 26 de julio de 2016.

La nueva Resolución no genera nuevas cargas regulatorias, y tiene como objetivo facilitar el acceso a la normatividad a las personas obligadas en presentar esta información.

**La Resolución entró en vigor el 21 de mayo de 2020.**

**En caso de requerir más información en relación con temas de Prevención**

**de Lavado de Dinero** y su regulación, comuníquese con sus contactos habituales en Nader, Hayaux & Goebel, o con [Luciano Pérez Gómez](mailto:lperez@nhg.com.mx) +52 (55) 4170 3027 lperez@nhg.com.mx o [Ángel Escalante](mailto:aescalante@nhg.com.mx) +52 (55) 4170 3088 aescalante@nhg.com.mx

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# Mexico Fundraising Chapter in The Private Equity Review

Category: Capital Markets, Energy, Partners, Project Finance, Publications, Telecoms  
written by Nader, Hayaux & Goebel | enero 21, 2021

**The Law Reviews: 9th Edition - By Partners Hans P Goebel, Héctor Arangua, Adalberto Valadez and Associate Miguel A González**

Over the past 19 years, Mexico's private equity (PE) industry has raised over US\$58 billion in capital commitments to PE investments, according to the Mexican Private Equity Association (AMEXCAP). Mexico's strong industrial and manufacturing sectors, along with recent reforms to policies and regulations, have had a positive impact on the PE industry, resulting in double-digit annual growth for the industry. Real estate and venture capital (VC) also had double-digit increases in the same period, of 16 per cent and 12 per cent, respectively. Currently, the number of active fund managers is over 180, with fund managers, or general partners (GPs), active across a range of sectors, and representing a sevenfold growth since the beginnings of the industry in the early 2000s.

In recent years, the Mexican government has been an important participant in and supporter of the PE industry, investing in more than 72 funds<sup>7</sup> through institutional investors such as NAFIN (the national development bank), the Capitalization and Investment Fund for the Rural Sector, Bancomext and Banobras, and through investment vehicle Corporación Mexicana de Inversiones de Capital, SA de CV, or Fund of Funds, which has invested more than US\$885 million in more than 84 funds and co-invested in 17 deals.<sup>8</sup> In addition, the National Institute of Entrepreneurship

helped the Mexican VC industry and seed capital ecosystem by investing or co-investing in 41 funds from 2013 to 2016. For 2016, the VC support grew to 100 million Mexican pesos, targeting one fund with an approach to the Asia-Pacific alliance countries, which is now finishing its fundraising period. Finally, domestic pension funds (AFOREs) have played a determinant role in the growth of the PE industry, having allocated more than US\$20.4 billion through 106 capital development certificates (CKDs) and investment project certificates (CERPIs) since 2008. This amount may increase by a further US\$5 billion, given the CKDs that are in the pipeline. Mexico is seen as one of the most favourable emerging markets to invest in, and is considered top in Latin America

according to various limited partner (LP) surveys, such as those conducted by the Association for Private Capital Investment in Latin America in 2014 and 2015, and by the Emerging Markets Private Equity Association in 2015, 2016 and 2017.<sup>9</sup>

Mexico returned to the World Economic Forum's (WEF) list of the top 10 countries to invest in globally, by rising four positions to number nine, sitting alongside the United States, China, Germany, India, the United Kingdom, Brazil, France, Australia and Japan. The Mexican economy is being reshaped, and in spite of an adverse economic environment, allows dynamism of its international trade, and the structure of its debts minimises the impact of external factors making it a healthy option for investing. The WEF ranks Mexico in 46th place, out of 140 countries, in the 2018 edition of the competitiveness index, which shows that the country has microeconomic and acroeconomic institutions with strong foundations. Mexico is placed as the second-largest economy in Latin America (with an estimated GDP of US\$1.222 trillion) and it is considered to have economic stability that has allowed to remain stable despite various difficulties. The Mexican economy has grown at an average annual rate of 2.5 percent for the past 10 years, mainly because of the implementation of new regulations to improve development, sensible monetary and fiscal policies, ordered management of public finances led by the Bank of Mexico, and a gradual improvement in the country's external environment, despite a zero per cent growth being estimated for 2019. The World Bank suggests Mexico might be the world's seventh-largest economy by 2050 - a positive outlook that will only serve to attract direct foreign investment.

The PE industry and the VC sector in Mexico continue to grow and mature. The

internationalisation of both funding sources and investment by domestic GPs suggests that Mexico is playing an increasingly influential role in financial and economic growth at both the regional and global levels. Within VC alone, Mexico has witnessed the number of GPs triple in the past seven years. The policies being implemented in Mexico, particularly the opening-up to competition of the energy and telecommunications sectors, and labour market reforms, have been welcome steps to attract investment and raise employment and, potentially, growth.<sup>13</sup> This is evidenced by the extent to which infrastructure and energy funds have also increased significantly, reaching 30 funds in 2016 – a clear effect of the energy reform allowing private investments in the energy sector, including oil and gas, electric power generation and renewable energy. As at October 2017, an estimated US\$25 billion in cash reserves were available for investment by PE funds investing in Mexico.<sup>14</sup>

Likewise, accumulated capital commitments from 2018 to September 2019 increased by 1.7 per cent. These capital commitments were mainly concentrated on seed and early stage VC funds.<sup>15</sup> As at September 2019, three new Mexican funds had been formed, bringing the number of funds operating in Mexico to 126, of which 60 per cent are now investing or managing their investments, while almost one-third are still at the fundraising stage.<sup>16</sup>

In general, information about PE funds is not publicly available during the fundraising stage unless the funds are public funds raised in the securities market, such as CKDs, CERPIs or Mexican real estate trusts (FIBRAs).

The Mexican fundraising market has been in an upward trend since 2014. In the past, the most attractive sector has been real estate, but recently the VC sector has clearly been rising. Mexican PE funds are active, growing and covering a large spectrum of industries (business and financial services, consumer goods, healthcare, technology, oil and gas, etc.). VC funds mainly invest in consumer services, fintech and technology; real estate funds mainly target the industrial (mostly automotive, aerospace and pharmaceutical), commercial, tourism and housing sectors; and the infrastructure and energy funds are currently concentrated in the oil and gas sector. In March 2018, the Law Regulating Financial Technology Institutions (the Fintech Law) was enacted, providing for regulation of,

among other things, electronic payments, cryptocurrency transactions and crowdfunding mechanisms. According to Fintech Radar Mexico, conducted by Finnovista in May 2019, Mexico is very close to reaching the 400 fintech start-up mark, and, in 2019, it regained leadership as the largest fintech ecosystem in Latin America, in part because of a strong presence of entrepreneurship and e-commerce.<sup>17</sup> The Mexican fintech industry has shown an annual growth rate of 29 per cent, with the creation of 98 new start-ups, with the dominating sectors being loans, payments and remittances.<sup>18</sup> Reports from recent years have highlighted the high growth rates of fintech in Latin America, such as LAVCA's 2017 Trend Watch: Latin American Venture Capital, which concluded that the fintech sector represents 25 per cent of the venture investments in information technology in the region. According to a survey conducted by Finnovista in collaboration with Endeavor, Mexican fintech companies have a monthly gross transaction value of 39 billion Mexican pesos, with an average of 8.7 million Mexican pesos being billed per fintech start-up per year. These results emphasise the importance and the possibilities of fundraising and VC investment in the development of the fintech ecosystem in Mexico. As the fintech industry represents a massive potential growth area in Mexico, the government has passed legislation that seeks to ensure financial stability and provide a defence against money laundering and corruption.

## **OUTLOOK**

The private equity industry in Mexico has been re-energised in recent years by government reforms and policies, a stable macroeconomic situation, stable population growth rate, an increase in real income and an active entrepreneurial ecosystem. Mexico has successfully completed USMCA (which is expected to supersede NAFTA) negotiations with the United States and Canada and has gone through a smooth, peaceful and democratic power transition following the presidential election that took place in July 2018, providing certainty to investors. However, Mexico's intention of being prepared for any scenario is clear from its aim to increase trade with Argentina and the Pacific Alliance (Colombia, Peru and Chile), as well as with the European Union and Asian countries, and from the government's continued efforts over the past few years in the infrastructure and energy sectors.

While the forecasts are moderately strong, we expect contract and investment opportunities to be abundant as government policies support a shift towards a larger

role for private investment in the Mexican infrastructure industry and in the still-booming energy industries. Opportunities will also be presented by the continuing rise of the fintech industry. The outlook for the Mexican PE industry is, therefore, positive, with local funds becoming more global and deploying capital, and investments by foreign funds increasing throughout the energy sector. If conditions remain the same and the growth rate remains at the levels we have been seeing, the PE industry should, according to AMEXCAP, reach US\$80 billion by the end of 2020. We predict that the regime governing publicly issued PE funds will continue to be improved, and that the regulations regarding investment restrictions applicable to Mexican pension funds will necessarily evolve towards alignment with the types of regimes seen in other, more evolved countries, allowing the pension funds to conduct private transactions and investments in funds or projects directly (rather than only through publicly issued securities such as CKDs, FIBRAs, FIBRA Es and CERPIs).

[To read the full article, click here](#)

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# Chambers Acquisition Finance Practice Guide 2019: Mexico Chapter

Category: Banking & Finance, Capital Markets, Publications, Securities and Capital Markets

written by Nader, Hayaux & Goebel | enero 21, 2021

Our Partners [Adrián López](#) and [José Humberto Rocha](#) contributed to the Chambers Acquisition Finance Practice Guide 2019: Mexico Chapter. The Acquisition 2019 guide provides expert legal commentary on key issues for businesses. The guide covers the important developments in the most significant jurisdictions.

You can read the full article at Chambers & Partners [website](#).

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# Cartels Chambers Global Practice Guide: Mexico Chapter

Category: Banking & Finance, Capital Markets, Publications, Securities and Capital Markets

written by Nader, Hayaux & Goebel | enero 21, 2021

Our Partner [Alejandro Mendiola](#) contributed to the Chambers Global Practice Guide – Cartels, Mexico chapter. The Cartels guide provides expert legal commentary on the key issues for businesses with competition matters. The guide covers the important developments in the most significant jurisdictions.

You can read the full article [here](#) or go to Chambers & Partners [website](#).

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# Guides to Equity and Debt Capital Markets law in Mexico

Category: Capital Markets, Practices Areas, Publications

written by Nader, Hayaux & Goebel | enero 21, 2021

[Hans Goebel](#) and [Monica Ramos](#) have published a regulatory overview of Equity and Debt Capital Markets in Mexico in cooperation with Thomson Reuters.

The Equity Q&A gives an overview of main equity markets/exchanges, regulators and legislation, listing requirements, offering structures, advisers, prospectus/offer document, marketing, bookbuilding, underwriting, timetables, stabilisation, tax, continuing obligations and de-listing. The PDF of this article can be downloaded [here](#). This Q&A is part of Thomson Reuters' global guide to equity capital markets law. For a full list of jurisdictional Q&As visit [Thomson Reuters website](#).

The Debt Q&A gives an overview of legislative restrictions on selling debt securities, market activity and deals, structuring a debt securities issue, main debt capital markets/exchanges, listing debt securities, continuing obligations, advisers and documents, debt prospectus/main offering document, timetables, tax, clearing and settlement, and reform. The PDF of this article can be downloaded [here](#). This Q&A is part of Thomson Reuters' global guide to debt capital markets law. For a full list of jurisdictional Q&As visit [Thomson Reuters website](#).

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# The Economic Landscape Changing Capital Markets Law in Mexico

Category: Capital Markets, Publications

written by Nader, Hayaux & Goebel | enero 21, 2021

In [an interview with Best Lawyers](#) CEO Phillip Greer, Partner [Michell Nader](#) discusses [Nader, Hayaux & Goebel's 2019 "Law Firm of the Year" award for Capital Markets Law in Mexico](#). Nader credits the attorneys on his team who have made the biggest impact on the firm this year, and offers predictions for what's to come of the financial markets in Mexico through 2019.

## **What achievements are you most proud of from this past year?**

If we look at the context of last year, it was an extremely complicated year from an economic standpoint. We had two factors that weighed heavily in the markets. One was whether NAFTA would be renewed, modified, or canceled with the U.S. and Canada; that put a lot of stress in the markets. And the second one was the very long presidential election period. There were a lot of questions and clients were hesitant at times to embark in new projects.

So, with those macroeconomic and political issues around you can understand that it was not an easy year for capital markets. Nonetheless, we managed to close a very large number of transactions, many of which included new structures and yielded fantastic results for our clients.

## **Are there any attorneys at your firm you'd like to recognize, who greatly assisted with your recent significant cases?**

It would not be possible to have these and many other capital market transactions close without a great team. I would say my partners [Hans Goebel](#), [Julián Garza](#), [Gunter Schwandt](#), [Héctor Arangua](#), and [Adalberto Valadez](#) stand out. So do [Diego Sánchez](#), [Mónica Ramos](#), and [Ana Paula Telleria](#), who just made partner, [Jenny Ferrón](#), and a few others. And as I said before, getting to this point without a great team would be just impossible.

## **What are some of your expectations for the newly appointed partners? How do you see them growing the firm and guiding its long-term goals?**

Well, I have a lot of confidence in both Ana Paula and Jose Humberto because they share and support the values of the firm. They are very hard workers. Clients love working with them and I think they will be a great support for many other lawyers in the firm. And will also help us lead younger generations.

## **Does your firm have a mentorship program and what does it do to help support your practicing attorneys?**

There is probably no other firm that devotes so many resources to training and developing its associates. We frequently have sessions to help lawyers learn on the spot how to deal with certain issues. Every month, we have a presentation to the whole firm, not only to capital markets, on varied topics. One could be on

infrastructure, another one could be M&A, another could be real estate, or capital markets.

Our attorneys attend these programs even if they do not fall within their area of expertise because we believe that while lawyers must have a defined expertise, they need a broad legal culture. Lawyers who have a very narrow focus, no matter how expert they are, are usually not fully effective when dealing with complex issues.

And then every month there is a breakfast for the capital markets group and we have people come in from outside the firm, bankers and other people who are very active, to talk to us. At other times, we arrange for presentations done jointly by associates and partners.

*We managed to close a very large number of transactions, many of which included new structures and yielded fantastic results for our clients.*

### **Are there any trends you've witnessed in capital markets law in the past year?**

There have been several regulatory changes issued by the securities commission. There is an upcoming overhaul to the pensions law and that overhaul will impact investments of pension funds in capital markets. The bill that was introduced to congress was released yesterday and we're looking at it, but it will bring about other changes. And then changes in the market that come not from legislative or regulatory actions, but from market conditions, the increase of interest rates in the United States has obviously made more challenging certain interests because clients, especially global clients, are looking for higher returns in Mexico. And in addition to higher interest rates we're seeing the first generation of [CKD funds](#) are about to start their divestment and liquidation process. So we will see some of them selling assets to liquidate; that will create other opportunities and challenges in capital markets.

### **How did your firm stay agile against its competitors in capital markets?**

I think first and foremost, we have an unbelievable well of talent, we are very practical, and we have a sincere devotion to clients. It's a very difficult combination to match. And being available 24/7 allows us to stay at the forefront of the market.

**Is there anything else you'd like to share with me about your firm, whether it's this practice area or the firm as a whole?**

We have a fantastic culture, in part because we've had very few lateral hires. We have been able to attract the best and most compatible talent. We're practical and devoted to our clients, and that's something very difficult to achieve. Perhaps it sounds repetitive but it sounds repetitive because we try to instill this same culture in each and every practice within the firm. And we have been very successful doing that. This is not something that happens automatically and this is not something that can be done overnight. It's something that requires daily work, a lot of effort, and a lot of follow up.

*Article was first published by BestLawyers on 4 April 2019. © 2010-2019 Best Lawyers — All Rights Reserved.*

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## **Capital Markets team contributes to Latin Lawyer Reference chapter**

Category: Capital Markets, Partners, Publications, Securities and Capital Markets  
written by Nader, Hayaux & Goebel | enero 21, 2021

Partners [Hans Goebel](#) and [Diego Sanchez](#) participated in the Latin Lawyer Reference chapter on Capital Markets. Latin Lawyer Reference provides answers to key legal and regulatory questions in Latin America on major practice areas. It provides insight in over twenty practice areas, across the region. The interactive format allows for quick-and-easy comparisons across jurisdictions.

You can download the PDF of the article [here](#) or read the full article on Latin Lawyer's [website](#).

